IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 920 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LATTABEN A/S LAXMIBEN L PARIKH

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 920 of 1997

MR GT PARIKH for Petitioner No. 1

(MR MUKESH R SHAH) for Respondent No. 1

MR HM BHAGAT for Respondent No. 2-4

MR AK CLERK for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 01/04/2004

ORAL JUDGEMENT

This petition is filed by Smt.Lattaben alias Laxmikant Parikh, widow of an ex employee of Life

Insurance Corporation of India (hereinafter referred to as "the corporation"). Initially when the petition was filed in the year 1997, the prayers were to the effect that,

> "that by a writ of mandamus or any other appropriate writ, direction or order, this Hon'ble Court be pleased to direct the respondents herein to pay commuted value and pension from 1.11.1993 to 23.6.1995 and the family pension thereafter under the rules at the enhanced rate from 24.6.1995 to 30.9.1996 and family pension at ordinary rate from 1.10.1996 to 1.1.19997 and onwards."

2. Thereafter, the petition was amended by filing Civil Application No.3384 of 1999 which was allowed on 15.04.1999 and under the amended prayer clause it is prayed that,

> "15A(1) That this Hon'ble Court may kindly quash and set aside the subrule (7) of Rule 3 referred to in paragraph 2(a) above;
>
> 15A(2) That the respondent corporation be directed to give benefits of commuted value as embodied in Rule 41(1) and referred to in para 2(B) above; and
>
> 15A(3) That this Hon'ble court may kindly quash and set aside the order dt.18th April 1996 of the Executive Director, LIC of India, Bombay and the order dt.10.4.1996 of Assistant Secretary, LIC of India, Zonal Office, Bombay, since the same ultra vires Article 14 of the Constitution of India, and all pensionary benefits may kindly be granted to the petitioner in the interest of justice."

3. The petition was heard and was disposed of by this Court (Coram: S.K. Keshote, J.) by judgement and order dated 15.08.1999, whereby the Court was pleased to direct in para 8 of the judgement as under:

> "8. In the result, this Special Civil Application is allowed and the respondent corporation is directed to consider the petitioner's case to be a special case and to pass an appropriate order to give her the family pension from the date of filing of this Special Civil Application. If the corporation is still of the opinion that without refund of the amount

of the corporation's contribution towards the provident fund this benefit cannot be given then it may consider the matter to grant exemption from the refund of the amount to the petitioner or this amount may be permitted to be kept by the petitioner as ex gratia help to the family of the deceased retired employee of the corporation itself. This exercise has to be undertaken and completed within a period of three months from the date of receipt of writ of this order and the arrears of family pension be paid to be petitioner within a period of one month next. Still the corporation decides not to give any benefit to the petitioner then a reasoned order may be passed and copy of the same may be sent to the petitioner by registered post AD. In case of difficulty, liberty is granted to the petitioner for revival of this special civil application by filing a simple note. Rule is made absolute in the aforesaid terms with no order as to costs."

4. Thereafter the respondent corporation passed order dated 18.11.1999, after receipt of summons. The petitioner filed a note for revival of the petition on which this Court passed the following order on 17.12.1999:

" .. .. The prayer made for revival of the Sp.C.A. is just and proper. In the interest of justice, the prayer made for is granted. Order accordingly. The Sp.C.A. is revived to its original number.

The office is directed to place this matter in the Court for final hearing on 17.1.2000."

That is how the petition is again on Board for final hearing.

5. Mr.Parikh, the learned advocate appearing for the petitioner vehemently urged that the approach of the respondent-corporation is not befitting the status of the corporation. After it was was recommended by this Court to consider the case of the petitioner as a special case and to pass appropriate order to give her family pension from the date of filing of the Special Civil Application, the same ought to have been considered in the true spirit of the direction issued by this Court. The learned advocate submitted that the Court was very clear in issuing the direction as it observed that,

"If the corporation is still of the opinion that without refund of the amount of the corporation's contribution towards the provident fund this benefit cannot be given then it may consider the matter to grant exemption from the refund of the amount to the petitioner or this amount may be permitted to be kept by the petitioner as ex gratia help to the family of the deceased retired employee of the corporation itself. (emphasis supplied)

6. The learned advocate for the petitioner submitted that the corporation did not pay due respect to the recommendations of this Court, which is clear from letter dated 18.11.1999, the relevant part reads as under:

"Pursuant to the said direction of the Hon'ble High Court of Gujarat, the undersigned has examined the case of the petitioner again in the light of Pension Rules, 1995. The Central Government in exercise of the powers conferred on it by clause (cc) of subsec.2 of section 48 of the Life Insurance Corporation Act, 1956 issued a notification on 28.6.1995 known as the Life Insurance Corporation of India (Employees Pension) Rules, 1995. The Pension Rules are, therefore, statutory in character and have got the force of law. Subsection 2 of Rule 1 of the said Pension Rules provided that the said rules shall be deemed to have come into force on the 1st day of November 1993. The Pension Rules, 1995 would normally have been applicable only to those employees in the service of the corporation on or after 1st November 1993. However, by way of special dispensation, the Central Government decided that the pensionary benefits would also be available to those who were in the service of the Corporation on or after 1st January 1986, but had retired before 1.11.1993 provided said employees exercised an option in writing within the stipulated period being governed by the pension rules and refund within the prescribed period the Corproration's contribution to P.F. including the interest accrued thereon with a further simple interest of 6% p.a. This would mean that those eligible employes who were alive on the notified date are entitled to the pensionary benefits including the commutation value. Having provided for such option to those employees of the corporation who retired from the services of the corporation on or after 1.1.1986,

it was considered equitable to provide for a special dispensation to the families of those employees who were in the service of the corporation on or after the 1st day of January 1986 but died while in service on or before the 31.10.1993 or having retired from service on or before 31.10.1993 and had died before the notified date. The grant of family pension in terms of subrule 7 of rule 3 of the LIC (Employees) Pension Rules, 1995 to the petitioner is thus purely a special dispensation. The said family pension is required to be distinguished from the family pension available under Rule 39 of Pension Rules, 1995, as in the latter case the employee was already a member of the pension fund." (emphasis supplied)

7. Mr.Parikh, the learned advocate for the petitioner very strenuously, with all vehemence at his command submitted that sub rule (5) of Rule 3 and sub rule (7) of Rule 3 accord discriminatory treatment to the similarly situated dependents of deceased retired employees of the Corporation. He submitted that only because the husband of the petitioner died on 23rd June 1995, i.e. prior to the Life Insurance Corporation of India (Employees Pension) Rules, 1995 (hereinafter referred to as "the Rules") were notified, i.e. 28th June 1995, the petitioner is put to a disadvantageous position. Despite repeated attempts, the learned advocate for the petitioner could not substantiate the aforesaid submission. In fact on perusal of the Rules it is clear that Rule 3 pertains to applicability of the rules. Rule 3 has as many as eight sub rules. Each sub rule pertains to a particular category of employees. Sub rule (5) of Rule 3 is as under:

"(5) were in the service of the corporation during any time on or after the 1st day of November 1993 and had died after retirement but before the notified date, their family shall be entitled for the amount of pension payable to them from the date on which they would have been entitled to pension under these rules had they been alive till the date on which they died, if the family of the deceased --

(a) exercise an option in writing within one hundred and twenty days from the notified date to become member of the Fund; and

(b) refund within sixty days after the expiry

of the said period of one hundred and twenty days specified in clause (a) above, the entire amount of the Corporation's contribution to the Provident Fund and interest accrued thereon together with a further simple interest at the rate of twelve per cent per annum from the date (sic) (of) settlement of the Provident Fund account till the date of refund of the aforesaid amount to the Corporation;"

As against this subrule (7) of Rule 3 provides as under:

"(7) were in the service of the corporation during any time on or after the 1st day of January 1986 and had died while in service on or before the 31st day of October 1993 or had retired on or before the 31st day of October 1993, but died before the notified date in which case their family shall be entitled to the family pension under these rules, if the family of the deceased, --

(a) exercises an option in writing within one hundred and twenty days from the notified date to become member of the Fund; and

(b) refund within sixty days after the expiry of the said period of one hundred and twenty days specified in clause (a) above, the entire amount of corporation's contribution to the Provident Fund and interest accrued thereon together with a further simple interest at the rate of six per cent per annum from the date of settlement of the Provident Fund account till the date of refund of the aforesaid amount to the corporation;"

8. From the above, it is clear that the criteria on which classification is made, is as to whether on 01.11.1993 an employee was in service or not, if an employee was in service on 01.11.1993, he forms a particular class; on the other hand if he has retired prior to 01.11.1993 then he forms another class. The learned advocate for the petitioner relied upon the following authorities to contend that prescribing a cut off date amounts to according discriminatory treatment.

(i) AIR 1971 SC 1409
(ii) 1983 (2) SLR 43
(iii) 1984 (2) SLR 254

(iv) (1985) 3 SCC 345
(v) 1987 (1) GLH 328
(vi) 1987 (4) SLR 728
(vii) 1989 (2) GLH 437
(viii) 1990 (2) GLR 1003, and
(ix) 2000 (1) GLH (UJ) 15

In the considered opinion of this Court, none of these authorities have direct application to the facts of the present case. Therefore, they do not warrant any detailed discussion.

9. As against this, the learned advocate for the respondent relied upon a judgement of this Court (Coram: R.M. Doshit, J.) dated 15.07.1996 rendered in Special Civil Application No.8494 of 1995 in the matter of Harish M. Bhatt & another Vs. Union of India, wherein these very rules, i.e. the Life Insurance Corporation of India (Employees Pension) Rules, 1995 were under consideration and the Court has considered the question as to whether, 'prescribing a cut off date can be said to be arbitrary'. The Court after taking into consideration the decision of the Honourable the Apex Court in the matter of All India Reserve Bank Retired Officers Association & ors Vs. Union of India & ors, reported in AIR (1992) SC 767, was pleased to hold that,

> "In the present case the corporation has followed the schemes framed by the Central Government, Reserve Bank of India, Industrial Development Bank of India, etc. wherein the cut off date has been fixed as 1st January 1986. Further, in their affidavit at para 10, it has been contended for the several reasons as stated therein, the date of 1st January 1986 was introduced as the cut off date for granting of the pension scheme, under the aforesaid rules. In the circumstances the respondent cannot be said to have acted arbitrarily or acted for oblique purpose with a view to depriving petitioners and such others of the benefit of pension scheme."

10. The Court was pleased to dismiss the petition. That decision was challenged by way of Letters Patent Appeal No.1120 of 1996 which was decided by Division Bench of this Court (Coram: K.G. Balakrishnan, CJ (as he then was) & M.H. Kadri, J.) by order dated 21.08.1998. The Division Bench, after making a reference to the decision of the Honourable the Apex Court in the matter of All India Reserve Bank Retired Officers Association & ors (supra) and after quoting the

observations of the Honourable the Apex Court, was pleased to observe that,

"In view of the aforesaid decision, the challenge made by the appellants against the fixation of cut off date has rightly been negatived by the learned single Judge. We find no reason to interfere with the judgement and order of the learned single Judge."

10.1 The question of prescribing a cut off date and its scrutiny by judicial forum has been the subject matter for a long. In this regard the decision of the Honourable the Apex Court in the matter of All India Reserve Bank Retired Officers Association & ors (supra) is the judgement wherein the Honourable the Apex Court has considered various aspects of the matter and has observed that,

"Whenever any rule or regulation having statutory flavour is made by an authority which is a state within the meaning of Article 12, the choice of the cut off date which has necessarily to be introduced to effectuate such benefits is open to scrutiny by the Court and must be supported on the touch-stone of Art.14. If the choice of the date results in classification or division of members of a homogeneous group it would be open to the Court to insist that it be shown that the classification is based on an intelligible differentia and on rational consideration which bears a nexus to the purpose and object thereof. The differential treatment accorded to those who retired prior to the specified date and those who retired subsequent thereto must be justified on the touchstone of Art.14, for otherwise it would be offensive to the philosophy of equality enshrined in the Constitution." (emphasis supplied)

The Apex Court was also pleased to observe that,

"When the State decides to revise and liberalise an existing pension scheme with a view to augmenting the social security cove granted to pensioners, it cannot ordinarily grant the benefit to a section of the pensioners and deny the same to others by drawing an artificial cut off line which cannot be justified on rational grounds and is wholly unconnected with the object intended to be achieved. But when an employer

introduces an entirely new scheme which has no connection with the existing scheme, different considerations enter the decision making process. One such consideration may be the financial implications of the scheme and the extent of capacity of the employer to bar the burden. Keeping in view its capacity to absorb the financial burden that the scheme would throw, the employer would have to decide upon the extent of applicability of the scheme."

11. In this connection it is to be recapitulated that the benefits extended in subrule (7) of Rule 3 of the Rules are in the nature of special dispensation as mentioned in the reply by the Chairman of the respondent corporation which are reproduced for ready reference:

".. .. Having provided for such option to those employees of the corporation who retired from the services of the corporation on or after 1.1.1986, it was considered equitable to provide for a special dispensation to the families of those employees who were in the service of the corporation on or after the 1st day of January 1986 but died while in service on or before the 31.10.1993 or having retired from service on or before 31.10.1993and had died before the notified date. The grant of family pension in terms of subrule 7 of rule 3 of the LIC (Employees) Pension Rules, 1995 to the petitioner is thus purely a special dispensation. .. .."

12. This Court while considering a similar question, in the matter of Ahmedabad Municipal Corporation Vs. AMC Nivrut Karmachari Sangh & ors, reported in 1998 (1) GLR 25 was pleased to observe that,

"It must be remembered that the pension retirees and CPF retirees could not be treated as belonging to one homogeneous class. Consequently, if any classification is made amongst them, then that would not be violative of Art.14 of the Constitution of India. The classification between the CPF retirees and pension retirees could not be said to be irrational or unreasonable in view of the nature of benefits received by the two and the obligations created by the two schemes, viz. CPF scheme and Pension scheme. The liability of the employer to make contribution towards the CPF is a statutory liability. Similarly, payment of

pension is also a statutory liability of the employer when once pension scheme is accepted. But the nature of two liabilities is quite distinct and different and the two could never be equated."

"Once this date of 1.1.1983 is found to be neither unreasonable nor irrational nor arbitrary, the question of making any discrimination by the appellant-respondent does not arise at all. .. .."

13. Besides, the question of extending the varying benefits to different categories is a matter of policy decision. Unless it is shown that the decision is violating the settled legal norms, the same cannot be disturbed without there being sound basis for the same. The Honourable the Apex Court while considering similar question was pleased to observe in the matter of Union of India and another vs. Deoki Nandan Aggarwal, reported in AIR 1992 SC 96 that,

"It is not the duty of the Court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts. The Court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the legislature the Court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be. The Court of course adopts a construction which will carry out the obvious intention of the legislature but could not legislate itself. But to invoke judicial activism to set at naught legislative judgment is subversive of the constitutional harmony and comity of instrumentalities."

14. In view of the above having found the classification made by Rule 3 of the Rules to be just and proper the claim of the petitioner fails.

15. However, taking into consideration the fact that the petitioner-a widowed lady might have challenged the Rules under advice available to her but then if at all

she decides to accept the benefits flowing from the Rules, the LIC shall consider the case of the petitioner sympathetically even belatedly without being technical about the timelag, in case the petitioner makes an application for grant of benefits under the Rules within three months from the date of receipt of the copy of this judgement, the respondent corporation shall consider the same in accordance with law within three months from the date of receipt of such application.

16. The petition is dismissed. Rule is discharged. No order as to costs.

(Ravi R. Tripathi, J.)

karim